

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BLUEFIELD DIVISION**

LENA GAITHER, as guardian  
and next friend of  
DOMINIQUE GILLIS, infant,,

Plaintiffs,

v.

CIVIL ACTION NO. 1:04-cv-00956

MERCER COUNTY BOARD OF  
EDUCATION,

Defendant.

**MEMORANDUM OPINION AND ORDER**

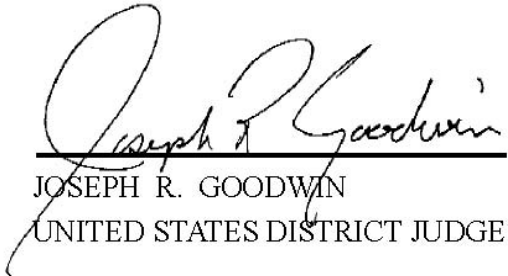
On August 4, 2005, the court held a hearing on the defendant's motion to dismiss [Docket 42] this case as a sanction for the plaintiff's failure to comply with discovery. For the following reasons, and for the reasons stated on the record, the court **GRANTED** the defendant's motion [Docket 42] and **ORDERS** this case **DISMISSED without prejudice**.

Dismissal is a serious sanction, but earlier attempts to compel the plaintiff's guardian, Lena Gaither, to comply with discovery have proved unavailing. Specifically, at the hearing, the court **FOUND** that: (1) Ms. Gaither has willfully failed to comply with discovery; (2) Ms. Gaither has willfully failed to comply with United States Magistrate Judge R. Clarke VanDervort's April 12, 2005 Order compelling discovery; (3) Ms. Gaither has willfully failed to comply with Magistrate Judge VanDervort's April 28, 2005 Order awarding attorney's fees and costs incurred in filing the motion to compel to the defendant; (4) Ms. Gaither has willfully failed to communicate with her attorneys, despite her counsels' repeated good-faith efforts to contact her; and (5) Ms. Gaither

willfully, and in direct contravention of this court's July 28, 2005 Order, failed to appear at the hearing held on August 4, 2005. The court further **FOUND** that Ms. Gaither bears the entire and sole responsibility for the above-described discovery problems and that counsel of record for the plaintiff in this case bears absolutely no responsibility for any of these problems.

The defendant's motion to dismiss is **GRANTED** and this case is **DISMISSED without prejudice**. The court **DIRECTS** the Clerk to send a copy of this written opinion and Order to counsel of record and any unrepresented party.

ENTER: August 8, 2005



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE